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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-830

BROOKSIDE CORPORATION,
Petitioner,

versus

INTERNATIONAL HARVESTER COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF RESPONDENT INTERNATIONAL HARVESTER COMPANY IN OPPOSITION

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OPINIONS BELOW

There is no written opinion by the District Court. The final judgment stating the grounds of decision is set out in the Appendix to Petitioner's brief, Appendix B, page 7a. The opinion of the Fifth Circuit Court of Appeals is reported at 513 F 2d 762 (5th Cir. Ala. 1975). The opinion is set out in full in the Appendix to Petitioner's brief, Appendix A, page 1a.

JURISDICTION

Jurisdiction is based upon 28 U.S.C. 1254(1), as stated in the petition.

QUESTIONS PRESENTED

Petitioner states that the questions presented are whether the Alabama Long-Arm statute is intended to apply in a case such as the present case, and whether the Alabama statute can within due process reach a defendant who has no contacts in the state. Respondent thinks that neither of these questions is presented for review, because the first question, concerning the intended application of the statute, is a state question, and the second question assumes no contacts with the state, whereon the facts in this case show very substantial contacts.

STATUTE AND CONSTITUTIONAL AMENDMENT INVOLVED

A. The statute involved is Title 7, Section 199(1) Code of Alabama 1940 (recomp. 1958) as amended. This statute is printed in Appendix F of Petitioner's brief, page 12a.

B. The 14th Amendment to the United States Constitution, Section 1.

STATEMENT

A truck fan blade was manufactured in Indiana by Petitioner Brookside which for many years has been supplying all of the fan blades for a certain type International Harvester truck. The trucks were sold and used in all states. International Harvester in this case, as in innumerable others, picked up the fan blade in Indiana and shipped it to Alabama where the blade broke

off while a truck was in use, nearly severing the foot of the truck driver. The truck driver brought a suit against manufacturer Brookside and seller International Harvester in the District Court for the Southern District of Alabama. The plaintiff truck driver secured service upon International Harvester through its designated agent, and upon manufacturer Brookside under the Alabama Long-Arm statute. International Harvester cross-claimed against manufacturer Brookside in the District Court. Brookside filed motions for dismissal for lack of personal jurisdiction as to both the plaintiff truck driver and the cross-plaintiff International Harvester. The District Court granted the motions and dismissed the complaint and cross-complaint against Brookside. International Harvester settled with the injured plaintiff, and the District Court dismissed the complaint because of the settlement and made final the Order of Dismissal of the cross-complaint because of lack of jurisdiction.

International Harvester appealed the dismissal of the cross-complaint to the 5th Circuit, which reversed, holding that the Alabama Long-Arm statute reaches Brookside stating, "where, as here, a manufacturer sells its product to a national distributor, knowing the product will be used in all states, it does not violate due process to require a manufacturer to defend a product's liability suit in that state where the accident occurs." The manufacturer Brookside is seeking certiorari.

ARGUMENT

I.

The Decision Below is Clearly Correct

It is undisputed that the manufacturer for many years before the accident in question, and thereafter, extending to the time of filing of the Affidavit in the District Court, had delivered all of the fan blades for the Transtar type truck which comprised the total production of International Harvester Company heavy-duty over-the-road and line-haul truck tractors. International Harvester distributes all of these blades throughout the United States through its system to franchised and company outlets. A great many of these blades are sold in Alabama, all with the knowledge of the manufacturer.

The Alabama Supreme Court has held that the substituted service statute extends to the limit of Federal due process. New York Times v. Sullivan, 272 Ala. 656, 144 So. 2d 25 (1962), rev'd on other gds., 376 U.S. 254, 84 S. Ct. 710, 11 L Ed 2d 686, (1963). The Alabama Supreme Court has conscientiously attempted not to exceed permissible due process jurisdictional limits, and in a number of cases had held on varying sets of facts that the Long Arm Statute could, or could not, reach corporations with limited connections to the state. Barrett v. Browning Arms Company, 433 F 2d 141 (5th Cir. Ala. 1970); Boyd v. Warren Paint & Color Co., 254 Ala. 687, 49 So. 2d 559, (1950); Davis v. Casco Products Corporation, 381 F 2d 470 (5th Cir. Ala. 1967); Dooley v. Payne, 326 F 2d 941 (5th Cir. Ala. 1964). There

is no misconception by the Alabama Supreme Court as to the controlling consideration of traditional notions of fair play and substantial justice. The present decision by the 5th Circuit is just one more interstitial decision, and is simply a decision on facts that occur in a limited number of cases. The repeated sending of fan blades into Alabama over many years, regardless of who paid the freight bill, is sufficient, within traditional ideas of fair play and substantial justice, to require the manufacturer to follow its many fan blades to Alabama and to defend its fan blades when one of them nearly severs a truck driver's foot. This is hardly something that shocks the conscience or offends traditional notions of fair play and substantial justice. In fact, not to allow the truck driver to reach the manufacturer in such a case does offend traditional notions of fair play.

II.

There is no Conflict of Decision

There is no conflict of decision between circuits. As a matter of fact, there is no agreement between circuits either, because no other circuit has been presented with the set of facts that appear in this case. Somewhat similar sets of facts have been presented to several state courts, and they have all reached the same decision as the 5th Circuit. One of the earliest cases in point is Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E. 2d 761 (1961). In that case an Ohio manufacturer sold a number of water heater safety valves to a Pennsylvania corporation. The water heaters with the valves attached were

sold by the Pennsylvania corporation, and at least one valve reached Illinois through the channels of interstate commerce. The plaintiff was injured in Illinois. The Illinois court held that its substituted service statute reached the manufacturer. In Ehlers v. United States Heating and Cooling Mfg. Corp., 267 Minn. 56, 124 N.W. 2d 824 (1963), the Minnesota Supreme Court held that the courts of that state had jurisdiction over a non-resident boiler manufacturer where a defective boiler caused property damage in Minnesota. The boiler had proceeded in interstate commerce from the manufacturer through several states, finally reaching Minnesota. In Andersen v. National Presto Industries Inc., 257 Iowa 911, 135 N.W. 2d 639, (1965), a coffee maker manufactured in Wisconsin found its way into Iowa where it caused damage through manufacturing defects. The Iowa Supreme Court held that the product was intended to go through interstate commerce into numerous states, including Iowa. The court ruled that it was not unfair that the manufacturer should assume the burdens as well as the benefits of its interstate transactions leading into Iowa.

Finally, the Appellate Division of the Supreme Court of New York held in Feathers v. McLucas, 251 N.Y.S. 2d 548, 21 A.D. 2d 558 (1965), that the New York state courts had jurisdiction where a plaintiff was injured by a defective tank which was manufactured in New Jersey and sold to a Pennsylvania corporation with knowledge that it would be attached to a truck making trips in interstate commerce to several states, including New York. The manufacturer had reason to know that the tank would be brought into New York.

In the case at bar the connections of the manufacturer with Alabama were even more substantial than in the four state court cases cited.

In the present case, the 5th Circuit followed its own decision in Coulter v. Sears, Roebuck & Co., 426 F 2d 1315 (1970). In Coulter an Illinois manufacturer supplied television sets to Sears Roebuck, which later distributed them nationally. One of the sets caught fire in Texas, damaging a house. The 5th Circuit held that the injection of television sets by the manufacturer into interstate commerce through Sears, over a long period of time, knowing that Sears would send them, among other places, to Texas, created sufficient contact between the manufacturer and Texas to require the manufacturer to defend this product in Texas.

III.

There is No Important Question of Federal Law

The present case presents one of the myriad of possible fact situations with respect to the presence in a state of a non-resident corporation. The case at bar is not a frontier case. It is well inside the limits of Long-Arm jurisdiction as delineated in case law. The manufacturer in the present case had far more connections with the forum state than did the trustee in Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L Ed 1283 (1958), and the insurance company in McGee v. International Life Insurance Company, 355 U.S. 220, 2 L Ed 223, 78 S. Ct. 199. The courts — all of them — continually emphasize that the reach of the relevant state statute depends upon "the facts in each particular case". It

would appear the only thing the Supreme Court can do is to lay down general principles. This has clearly been done in the McGee case, enunciating the principle of "traditional notions of fair play and substantial justice". The various state Supreme Courts have consistently tried to stay within these boundaries, and this formulation has appeared to be workable. A pronouncement by the Supreme Court that the facts in the present case exceed — or don't exceed — due process limits, would do more harm than good. It would add nothing to principle, and would simply raise more questions such as what effect a slightly differing complex of connections would have. It would seem that the Supreme Court in the cases cited has laid down the principles and should allow — and can expect — the lower courts to make the decisions in the countless number of different fact situations.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Samuel M. McMillan, the attorney for the Respondent herein, certify that copies of the foregoing Brief in Opposition have been served on Robert H. Smith, attorney for the Petitioner, by mailing the same to him, properly addressed and postage prepaid at his office address 3100 Cottage Hill Road, Mobile, Alabama 36606 on this the ____ day of January, 1976.

SAMUEL M. McMILLAN